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REMINISCENCES
OF
VIRGINIA'S JUDGES AND JURISTS.

ADDRESS

BY
JOHN RANDOLPH TUCKER,

OF WASHINGTON AND LEE UNIVERSITY,

At a Banquet tendered to the Members of the New Court of
Appeals by the Richmond Bar Association,
February 7th, 1895.

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Reminiscences of Virginia's Judges and Jurists.

Mr. President and Gentlemen of the Richmond Bar Association :

Your kind invitation to give to you my reminiscences of the Bench and Bar of Virginia was a pleasant assurance that, in the quiet seclusion of my professorial life, I still lived in the memory of the bar, to association with which I was first admitted on the 10th of January, 1845, in the Hustings Court of this city. I am a veteran with more than semi-centennial memories. A half century—how crowded with tremendous events; how full of social, political and professional changes—radical changes—how bright with stirring recollections of conflicts in the lists of the forum with the Chevaliers of the Virginia Bar, while eminent judges held in even balance the “Scales of Justice” for the decision of the contests—judges and lawyers whose names and fame it is our sacred duty to embalm in our heart of hearts forever.

In October, 1835, my honored and beloved father, then president of the Court of Appeals, brought his family to reside in Richmond. He had seven sons, of whom an old wag said to my father, as we were following him: “Judge, I hope they are not like the seven plagues of Egypt.”

I was old enough to take interest in the forensic contests of that splendid era; and, while I can tell but little of the legal problems involved, the faces and *personnel* of judges and lawyers are impressed on my memory as living pictures.

THE OLD COURT.

The old Court of Appeals was held in what is the present Senate chamber, the five judges sitting in common deal arm-chairs, each at his own little table, three on one side of the large fire-place and two on the other, and ranged perpendicularly to the wall. Behind a plain curved bar, covered with gray cloth, stretched along the front of the separated seats of the judges, stood and argued the men whose genius and learning were worthy of the tribunal and of this venerable Commonwealth.

In my mind's eye I see them now. My father, then in his prime, sat nearest the fire-place. Next to him I can see the small, but erect figure, surmounted by a bald and well-developed head, of Francis T. Brooke, who held his seat from 1811 to 1851. Next to him sat the noble and dignified judicial form of William H. Cabell, an ex-Governor, who, with Judge Brooke, was a judge of that court for forty years. On the other side, I see the calm, considerate and earnestly conscientious face of Dabney Carr, in which gentleness and firmness were blended in beautiful harmony, once chancellor and then judge of this court, from 1824 to his death, January 8, 1837. And next to him I see the vigorous face, strongly marked with common sense and integrity, of William Brockenbrough, for many years an eminent judge on the circuit and of the General Court, and then a judge of this court from 1834 until his death, in 1838.

In 1837 Judge Richard E. Parker, who had been an able circuit judge for many years, and was then United States senator, was elected to fill the place of Judge Carr, and at his death, in 1840, Judge John J. Allen was elected to succeed him, and remained on the bench until the *civil* power became *subordinate* to the *military* power, in 1865. Prior to his accession to the bench, however, Robert Stanard had been elected to this court in place of Judge Brockenbrough. On the resignation of my father, Judge Briscoe G. Baldwin succeeded to his place, and Judge Cabell became President of the court. On the death of Judge Stanard, in 1846 (he died with paralysis, pen in hand, writing his unfinished, yet valuable, opinion in *Yerby v. Lynch**), William Daniel, an eminent lawyer at the Lynchburg bar, succeeded him, and held the position until military edict removed him. He was the son of the eminent circuit judge, William Daniel, whose character has left its impress on the judicial history of the State.

A NEW COURT.

After the new Constitution of 1850-1, and the death of Judges Cabell, Brooke and Baldwin, the court became constituted of the following judges: President Allen, with Daniel, Moncure, Lee and Samuels as associate judges, and they constituted the court when, in 1857, as Attorney-General, my official relations to the judges brought me into closer and delightful personal intercourse with them. And when Judge Samuels, after faithful service on the court, died, in 1859, there came upon the bench my old friend, a pupil at the University of Virginia of

* Grattan, 460.

my father, the now living and eminent jurist, William J. Robertson, whose place in the front rank of the profession in Virginia is conceded by all.

The Military Court, during the reconstruction era, I never saw, and knew but one of its judges. Let it pass. They had been made to supersede the court of the Pierpont Dynasty, composed of the venerable President Moncure, Judge William T. Joynes and Judge Lucas P. Thompson; but he, dying very soon, his place was supplied by Judge Alexander Rives.

Upon the organization of the court under the Constitution of 1870, it was constituted of President Moncure, Joynes, Christian, Staples and Anderson. Judge Joynes died, lamented by the profession as a judge of marked native ability, and of varied and accurate learning, and Judge Wood Bouldin succeeded for a few years of distinguished service until his death, when the yet living Edward C. Burks succeeded him for too short a term of service; another of my old college-mates, and a graduate with Judge Robertson in law under my father in 1842.

Of this court all have passed away except Judges Christian and Staples, but the record of their decisions enables us to estimate them as eminently worthy of their honored predecessors. Their praise is voiced by the profession for learning, ability and integrity.

THE RECENT COURT.

Though I have occasionally practiced before the court whose term is just ended, I was too little brought into professional and personal relations with them, and their record is too recent to be the proper subject of reminiscences by a septuagenarian.

But I personally knew, some of them intimately, all very well, every judge who has occupied a seat on the appellate bench since October, 1835; and since 1857 my personal relations to all, my cordial friendship for many of them, has linked me to its personnel with bonds never to be broken.

Of the judges of the ancient court—of Edmund Pendleton, the president of the convention of the people of Virginia which ordained, on the 29th of June, 1776, the first Constitution of a free, sovereign and independent Commonwealth, known in history; the president of the convention of 1788, which ratified for, and on the behalf of Virginia, the Federal Constitution proposed by the Federal convention of 1787, and then first president of the Court of Appeals of Virginia until his death, in 1803, history will ever speak, and I may well be

silent. Of succeeding presidents, Peter Lyons, William Fleming and Paul Carrington, and of their associates, Mercer, Henry Tazewell, Spencer Roane, St. George Tucker, John Coalter and John W. Green, I leave the records to speak, as I never knew but one of them, Judge Coalter, who was my uncle by marriage, and whose upright and sturdy character and cordial and sincere manners I knew so well as to revere, with his numerous descendants, his memory as a man and a judge.

These primal expounders of our law have laid broad and deep its foundations; and, if their opinions are not so erudite in case-learning as those of later judges, it is their glory to have made the precedents which their successors cite and rest upon; and we may devoutly hope that the superstructure they raise may be worthy of the fundamental principles of right and justice, which the ancient court made the cornerstone of our system of jurisprudence.

THE OLD REGIME.

I wish I had time and skill to delineate those judges of '1835 as they are photographed upon my mind and memory—Gentlemen of the old regime.

Judge Francis T. Brooke was a lieutenant in the revolutionary army before he was of age. He told me his first month's pay was \$33, commuted to \$33,000 in Continental currency. How think you he spent it? A coat for \$20,000, pants for \$10,000, a vest for \$1,500, and \$1,500 for the buttons!

His quick, intuitive and direct mind seized, on the hearing of a case, upon the pivotal point in contest, and decided it without the painful process of tedious ratiocination, which other judges adopted. He spoke and wrote *ad rem*, and ceased, when that was accomplished by clear and lucid statement.*

Judge William H. Cabell, of Grey Castle, on Gamble's Hill, was a fine example of an appellate judge. His temper was calm and impartial, his disposition kindly, but his purpose was firm, his mind was comprehensive and logical, and his style eminently clear in its judicial discrimination, and decided in its conclusions. What higher evidence did a judge ever afford of that intellectual magnanimity, which will permit no pride of consistency to obstruct his devotion to truth as revealed to him by more profound consideration, than Judge Cabell displayed in *Davis v. Turner*;† in his noble surrender of a long series of his own

* Judge Brooke was President of the Court for several years prior to 1831.

† 4 Grattan, 422.

decisions, upholding the rigorous doctrine of fraud *per se*, to the new view presented by himself and Judge Baldwin, and so luminously expounded by the latter in that case?

PITCHING QUOITS.

Judge Dabney Carr lived at Elba, in the suburbs of Richmond, near the old grounds of the Buchanan Spring Quoit Club, which he attended with the eager and simple joy of boyhood (I can see him now, pitching his quoit and measuring with judicial fairness its distance, and that of his competitor from the pin—he used to pitch there with the great chief justice, who was more skilled than he in the game). He was the son of a young and famous statesman in the revolutionary movement, and a nephew of Thomas Jefferson. He was, as lawyer and judge, addicted to the chancery, a true successor in this branch to the great chancellor, George Wythe, who had shone with equal splendor in the Confederate Congress of Independence, in the Federal Convention of 1787, and the Ratifying Convention of 1788, as on the Woolsack of the Commonwealth. Like him, whom I suspect he took as his model, Judge Carr was ever persistent in fighting a pathway to the real right through the technical abattis of the legal forum, until his serene and noble nature could feel he had decided according to the rules of justice, which know no law but the law of the God.

My mind (excuse me for this) reverts to the many Saturdays I spent my holiday at his hospitable home, in the genial sunshine of his noble presence, and I can now sadly see him, with patient face and enfeebled frame, stretched on what was his dying bed, gently and humbly aspiring to the rest of the better world.

Judge William Brockenbrough I knew less of personally than any of those already mentioned. But I knew his eminent son well, the late Judge John W. Brockenbrough, of the District Court of the United States, who inherited much of his ability from his father, and manifested it at the bar, on the bench and in the chair of the professor.

Judge William Brockenbrough had been a judge at *nisi prius* and in the General Court, and his experience in those courts made him *par excellence* the common law judge of the bench, as he sat by the side of the eminent Chancellor Carr. His mind was marked by strong common sense and vigorous thought, and he had a most pungent method of presenting his views. His judicial career on the appellate bench was short, but he left the powerful impress of his character on its records.

HENRY ST. GEORGE TUCKER.

I pause, for delicacy perhaps forbids me to proceed—and yet filial love and admiration impel me to speak of the president of the court, not in my own perhaps too partial view of his judicial career and his personal character, but in words which fraternal friendship have engraved upon his tomb:

“IN MEMORY OF HENRY ST. GEORGE TUCKER.

“Learned without pedantry; grave without austerity; cheerful without frivolity; gentle without weakness; meek but unbending; rigid in morals, yet indulgent to all faults but his own.

“In him the elements of goodness were combined and harmonized in a certain majestic plainness of sense and honor, which offended no man’s self-love, and commanded the respect, confidence and affection of all.

“He lived without reproach,
And died without an enemy.”

During a successful career at the bar, he represented his people in both Houses of the General Assembly of Virginia and in the House of Representatives of the Congress of the United States. He was Chancellor of the Fourth Judicial District from 1824 to 1831, during which time he founded a most successful law school in Winchester; was President of the Court of Appeals from 1831 until 1841, when he resigned to become Professor of Law in the University of Virginia, which also he resigned from ill health in 1845, and died in 1848.

In that early day, and until about 1849, there were no printed records and no printed briefs in the Court of Appeals. In every case, three manuscript records were made—one for the five judges, and one for the counsel on the respective sides. Think of it! Such a record as we had in *Robertson v. Wright*,* of 2,000 pages of print, to be examined in manuscript. Think of the labor of five judges with one record, in sifting from such a mass the essential facts and points for decision. How well I remember being sent again and again as a boy by my father to one of the other judges to let him have the record of a case for a night. It is marvellous how business could be successfully dispatched. It necessitated painstaking prolixity on the part of counsel to refer the court to the facts in the record, and with slow oral statement to refer to the cases, which each judge took down in his own notes for examination.

* 17 Gratt. 534.

SWANN V. SELDEN.

I remember, in 1837, the important case of *Swann v. Selden*, which excited personal interest in society here from the relations to it of the then young and handsome Thomas Swann, afterwards Governor of Maryland, and a member of the House of Representatives while I was a member of it. The first time I ever heard the word "domicil" was in the argument of that case; in which its definition was an important question. Mr. Swann, of Alexandria, spoke four days for the appellant, was followed by Stanard (afterward Judge Stanard) for three days, and by Chapman Johnson on the same side for six days, when the celebrated Gen. Walter Jones closed it in a speech of four days. Think of it!—seventeen days for the argument. Happily the case for these reasons was never reported. But there were no printed briefs and no printed record. The prolixity of the argument was due to these defects in the system. The art of printing records and briefs has greatly lessened the labors of counsel and bench.

The opinions of the judges were not as long then as now—and in the period of which I speak the judges very often delivered several opinions, stating the peculiar reasons of the particular judge for his conclusions; a method prevailing in the old English courts, and still to a great extent.

There was one other respect in which the court had meagre appliances, compared with the present day. The Law Library was not well supplied. One illustration will suffice. In the case of *Powell v. White*,* in which the president of the court is said by Mr. Wallace in his notes to the leading cases in equity, to have controverted with "distinguished and convincing ability," and with success, the doctrine of Lord Eldon in the case of *Copis v. Middleton*,† the president remarked, that the report of the case was not in the library, and he could only know its character from the citations of it in Judge Story's work on Equity Jurisprudence.

This defect left court and bar very much to their own native resources, and made them argue and decide more upon principle and less upon cases.

THE AUTHORITIES.

The anecdote told so often, and vouched to me as true by Gen. A. R. Lawton, of Georgia, who was a student under Judge Story at Har-

*11 Leigh, 322.

†1 Turner & Russ, 224.

ward, and heard him tell it, shows the self-reliance of the great Chief Justice upon fundamental principles, to which he was impelled by the paucity of our libraries, rather than on cases. As reported by Judge Story, he would, in conference on a case, state the law which ruled it, and then would say: "Brother Story, please hunt up the authorities."

It is certainly true, that the ready access to cases by means of digests and indexes, is a labor-saving device which makes legal research more mechanical than mental. It dispenses with a reliance on one's own personal resources, by furnishing the thoughts and conclusions of others, made to his hand. Digests are thought-dispensing machines. It is the man without books, or with but one book, who is to be feared as the creator of new thoughts, which so often sweep the deck, covered with musty tomes of obsolete lore, or with crude and ill-fitting decisions from the many factories of ready-made law at home and abroad, which load the shelves of our modern libraries.

I will not be understood to decry case-learning; but it should aid, not supplant; stimulate, not suppress, the intense work of the native intellect. A broader view of fundamental principles is unquestionably gained by observing the many cases in which their application is needed, and by thus widening the general truth through an analytic dissection of as many particular cases as possible. But while thus giving my judgment for an intelligent combination of both systems, I am free to say, if either alone is to be preferred, it is that which strains mental effort to its highest excellence, where libraries are not to be reached, rather than that under which the sluggish and unthoughtful explorer of digests for what other men have thought, induces self-exemption from any thought of his own.

ORIGINAL THINKING.

But this is not reminiscence—though not an improper criticism upon the merits of a condition of things, in which original thought was compelled by a necessity, which may be enervated without it. The judges of every period, whose vigorous grasp of principles has placed them in the front rank of their order, have been men, who, like Marshall, blazed the path of legal progress by original and self-reliant thinking; and not those whose decisions are a collection of other men's thoughts, in the midst of which you can hardly find their own.

My first appearance at the bar of the Court of Appeals was in 1846, in the Virginia leading case of *Hunter v. Waite*,* before President

* 3 Grattan 26.

Cabell and Judges Stanard, Allen and Baldwin—absent Brooke. We had only three manuscript records in that case. My leaders were John M. Patton and Henry L. Brooke; my opponents, Benjamin Watkins Leigh and Conway Robinson. It was a new experience for me. Only two judges delivered opinions, the two judges who, in the cases of the *Bank v. Patton* and *Hutchison v. Kelly*,* had in preliminary skirmishes prepared for the contest of these judicial giants in the case of *Hunter v. Waite*, on the validity of Voluntary Settlements. It is a matter of history that the revisors (Patton and Robinson), who argued this case on opposite sides, formulated in the Code of 1849 substantially the views of Judge Stanard, and settled the law for Virginia; though in other States to this day, the contrary views in the main of Judge Baldwin have been generally concurred in. The opinions of both judges were worthy of their merited fame. I may add that a bill was filed after this decision, on behalf of a subsequent creditor of the grantor in that Settlement, to be let in on the fund on the ground of Judge Baldwin's opinion. I relied on Judge Stanard's view, which was sustained by Judge Parker, and the bill was dismissed.

UNTIL THE WAR.

The judges who filled the bench after 1850, and until the close of the war, were men of the highest character and of marked ability. President Allen was a man of varied learning in his profession and with a judicial experience of over thirty years—twenty-five of it on the Appellate Court. He was accurate and well read in history and general literature. His mind was at once logical and comprehensive. Though learned in technical law, he was never narrow; and while eminently capable of judicial refinement, he never allowed it to draw him away from the broad and enlightened doctrines of right, which he made the corner-stone of his judgments.

He rarely was diverted from his judicial duties into any political action; but he attended a meeting of the people of his county of Botetourt in the winter of 1860-'61, and formulated a statement of the relations of Virginia to the impending crisis, which for its force and logical precision, and for conciseness and clearness of style deserves to be preserved as perhaps the ablest vindication of the right and duty of Virginia to secede from the Union, which appeared in that momentous period.

By the convention of Virginia he was appointed, at the passage of

*1 Robinson, 528, 131.

the Ordinance of Secession, to be a member of the Board of Council to advise and act with the commander-in-chief of the Virginia forces, the illustrious Robert E. Lee, in which capacity he served with zeal and fidelity until Virginia joined the Confederacy. He remained to the close of the war a firm and consistent adherent to the ideas he had expressed in his Botetourt declaration of principles.

Judge Wm. Daniel was by heredity a lawyer. His father, Judge Wm. Daniel, was eminent as a judge, and the son was a nephew of Judge Briscoe G. Baldwin. He added to his juridical inheritance largely by his own talents and study. His mind was acute, discriminating and vigorous; and his extensive practice, as well as his service in the State Legislature, and his fine powers as an advocate and public speaker gave to his decisions as judge a breadth, which took a range beyond the strict limits of mere judicial investigation. A good specimen of his powers as a constitutional lawyer is his opinion in the elaborately argued case of *Baker v. Wise*.* If I may be permitted to criticise, I may add, that his intellectual gifts were perhaps better suited to the conflicts of the bar than to judicial discussion, though he was eminent in both; and he earned, as he merited, the praise of the profession during his nearly twenty years' service, for great ability, impartiality and integrity as Judge of the Supreme Court of the Commonwealth.

SENSE OF RIGHT.

On the left of the president for fourteen years, and afterwards as president for nearly fifteen years more, sat the careful, painstaking, conscientious and just Richard C. L. Moncure. His forte was in his strong sense of right, from which no sophistry, no technical device—nothing could swerve his honest and direct nature. Deeply religious in his personal life, he always seemed to act on the bench, as if under the guidance of the Supreme Judge, to whom his conscience and intellect bowed in absolute submission. He was a lawyer, who lived in the country, and in his plain but hospitable mansion, amid social relations as pure, simple and unpretending as in the humblest home in the land, he learned law from the dictates of Divine Wisdom, with a diligent use of all the appliances which authors and cases could furnish. He was strong and persuasive as an advocate, but grand as a judge—not so much from mere intellectual strength as from the integrity and force of his moral nature. All who knew this admirable magistrate will con-

* 16 Grattan, 139.

cede this tribute to his merits by one who rejoices to lay this testimonial of sincere personal friendship on his tomb.

I knew Judge George Hay Lee well. He was named for George Hay, a distinguished lawyer in the early part of the century. We were natives of the same old town of Winchester, where also Judge William Daniel was born. He had studied law at the Winchester law school of my father, with Judge Samuels, who sat on the same court with him. Trained in the chancery office of his father, Daniel Lee, an eminent chancery clerk, he was, perhaps, the most expert and skillful of the court in all matters pertaining to chancery practice. As a land lawyer, whose able argument is reported in the leading case of *Taylor v. Burnside*,* on so many of the phases of the land law, he was the judge to whom more than any other such questions were referred. In private life his manners were courteous and genial, his integrity was without a shadow, and on the bench he was a model of that considerate dignity so highly appreciated by the bar and public.

Judge Green B. Samuels I knew at the bar, on the circuit bench and on the Court of Appeals. He was a close and severe student, well versed in the principles of law, as well as in cases, and was in his judgments direct and concise; never discursive or prolix. As a man, a lawyer and a judge, he holds a high place in the esteem of his own people in the Valley, and commanded the respect and confidence of the bar as a judge of inflexible integrity, and of ability in council and in judgment.

At his premature death in 1859, after seven years' service, he was succeeded by my old college and life-long friend, Judge William J. Robertson, of whom I have already spoken, whose service ended at that *Punctum Temporis*, when the old maxim was applied in the modified form of *post arma silent leges*, never invented until the period from 1865 to 1870.

It is my purpose to let the living speak for themselves, and only to revive the memories of the honored dead, but I cannot forbear to repeat of Judge Robertson what President Allen said of his admirable opinion in the conscript law case of *Burroughs v. Peyton*,† that it was one of the best models of a pure judicial discussion to be found in our reports.

Coming down to the post-reconstruction era, when Judge Joynes sat on the right of President Moncure, I reach a period within the memory

* 1 Grattan, 165.

† 16 Grattan 470.

of many of the living members of the bar; but I cannot refrain from speaking of his very high merits as a lawyer and judge.

I knew him well. Except one man (you will readily know I mean the late William Green), I think Judge Joynes was the most learned case lawyer in Virginia. No case which affected in any degree his well digested views of legal principles could escape his ever vigilant and inquisitive research. He was full to overflowing with the new phases which decisions are ever presenting of old ideas. He was a progressive lawyer; he forgot nothing that was behind, but he reached to that which was before, and he was ever pressing towards the highest mark in judicial eminence.

It was refreshing for an ordinary lawyer to meet him. With liberal hand he uplifted the flood-gates, and fruitful irrigation of arid legal minds was the blessed result. I have rejoiced in this result as a personal blessing. Of a fertile and suggestive genius, with an acumen, which clearly discriminated between conflicting cases, he was excelled by none of his associates in the fulness of his learning, and in his enlightened view of jurisprudence as an ever advancing science. These great qualities are always apt to mislead the judgment, in the eager search for new light, and for new applications of old truths. His progressive passion was steadfastly restrained by the less brilliant, but more sober judgment of the presiding judge.

His advanced views in every branch of his profession find many illustrations in the reports. He was not a mere follower, but a leader. Note the fine opinion of Mr. Justice Mathews in *Martin v. Cole*,* on the nature of all negotiable contracts; and yet in its reasoning and conclusions it was anticipated by Judge Joynes in *Woodward v. Foster*† twenty years before.

Upon his death, Judge Wood Bouldin was elected to fill the vacancy. I had known him since 1845. A country lawyer originally, he came to the Richmond bar in about 1845, was a partner of Robert C. Stanard, a distinguished son of Judge Robert Stanard, and became a leader in the profession here.

On the bench he displayed those qualities in a high degree which had always marked his private life and his honorable career at the bar. With a personal candour which was transparent; with an absolute impartiality which knew neither fear nor favor; with an integrity that had no flaw, and an independence that was manifest in every

*104 U. S. 30.

†18 Gratt. 200.

lineament of his face; and with a clear and discriminating view of the very right, he commanded the esteem of the public and the profession, as an honorable counsellor and a righteous judge.

Of that court one other judge has passed away—my fellow-townsmen and esteemed friend, Judge Francis T. Anderson.

Before his election to the bench, he had been withdrawn in a large degree from active practice at the bar, in which at an earlier period he had been fully engaged on the Circuit and before the Court of Appeals. As a judge, it is no disparagement to say he was not a case lawyer, but he had been well grounded in legal principles, and his sense of justice was strongly enforced by a mind naturally vigorous, and by a character firm, resolute, brave and independent. He was unbending in his integrity of purpose, and unflinching in his maintenance of right. His sole aim in decision was to reach the truth; and no technical obstructions could divert his aggressive march to that result. He was diligent in the discharge of his duties, and his opinions mark him as a judge of real strength in all the mental and moral qualities, which constitute the able, conscientious and independent magistrate.

His sincerely religious character, his inflexible integrity, his private honor, his steadfast friendship and his fine social qualities commanded the esteem, confidence and affection of his family and friends, and of the people of the State, which he served with distinguished fidelity.

CIRCUIT JUDGES.

But what do I remember of the Circuit Court judges?

I have seen the General Court in session, composed of all the Circuit judges, with jurisdiction chiefly in criminal appeals, until the Constitution of 1850.

Judge Daniel Smith was the senior judge and presided when I saw it in session. He was a modest man, with great simplicity of manners, but with unblemished character and a judgment so unerring that he was seldom reversed. He reversed his own decision at *nisi prius* in the great case of *Bank of United States v. Steenberg*, made under the influence of the powerful argument of Mr. Chapman Johnson for the plaintiff. His self-reversal was affirmed by the Court of Appeals.

I remember his venerable and gentle face, as he presided at his last term in Warren county.

Judge John B. Clopton was a type of the country gentleman in private life, and on the bench considerate, patient and dignified. He

was, though not laborious, an able and learned judge; and was a member of the great convention of 1829-'30.

Judge John Scott (with the name and genius of Elden), was a man of masterful power in mind and character. At the bar he had been a great advocate; in the convention of 1829-'30 he was a prominent leader in its deliberations; a vigorous controversial writer, and on the bench he was one of the ablest judges in the country. His judgments showed more original thought than learning, and his temper was firm and commanding. Let one anecdote serve to illustrate his practical method of dealing with questions at *nisi prius*: A slander suit was pending between two preachers; counsel suggested the venire might have members of their congregations upon its roll. The Judge called on all who were such to stand up. A large number rose. The Judge said, with a vein of sarcastic humor, but with grave decision: "Sheriff, summon a jury of sinners to try this issue between saints."

AN AUTHOR.

The venerable John T. Lomax was a laborious and learned judge, and an author of valuable law books. His high Christian character and devotion to duty left his name to the profession, crowned with the fame which ever rests upon the memory of a conscientious, impartial and able administrator of justice among men.

Judge Lucas P. Thompson holds a very high place in the esteem of the circuit where he presided for so many years over the business conducted by a bar of rare ability in the State. He had learning, zeal and ability, great independence of character and inflexible decision of purpose. He was appointed to the Court of Appeals, but died before he performed any service.

Of Judges Robert White, William Leigh, Summers, Saunders, Fry, Baker, Estill, Christian, Duncan, Gholson, Nash, Scarbrough, Fulton, Douglass, Johnston, Hudson, Kenney, Coleman, Wingfield, Jeffries and others, it would be agreeable to me to speak, if time permitted; but as many of them I never saw upon the bench, and knew nothing except by reputation, I forego the otherwise pleasant task. I shall speak of some whom I knew well from association, professionally and personally.

Judge Richard Parker, son of Judge Richard E. Parker of whom I have spoken, presided in the lower Valley Circuit from 1851 to 1865. He was an able, sound and efficient judge.

It was his fortune to preside at the trial of the notorious John Brown

and his accomplices in the treasonable and murderous attack on the town of Harper's Ferry on the night of October 16, 1859. In this attack many peaceful citizens were killed and the United States Armory was seized. A marine force under command of Col. Robert E. Lee assaulted "John Brown's Fort," killed some of the defenders and captured the leader and several of his fellow-marauders. They were indicted for treason against Virginia, as well as for the murder of her citizens.

On the trial, so unique in all its circumstances, Judge Parker displayed ample ability, and an impartiality which silenced adverse criticism and commanded the respect of the public everywhere. The prisoners were convicted.

An elaborate petition for appeal from the judgment was prepared by Mr. William Green, with whom was associated Hon. Samuel Chilton, in which the doctrines of the law of treason were discussed with fullness of learning, and a reference to an old case of Reginald Tucker, of whom Mr. Green said to me, with his characteristic pleasantry (I being Attorney-General at the time, and acting for the Commonwealth), that he was no doubt a relative of mine, but was hung, drawn and quartered for treason against one of the noble house of Stuart. Rebellion in that period was not such a stain upon the name I bore, as to appal me.

The court, upon full and careful consideration, denied the appeal, affirmed the judgment, and the convicts were executed December 2, 1859, at Charlestown, Jefferson county.

In my official experience, I had one other case of treason before Judge Hudson. Other crimes were charged against the prisoner, for whom appeared the celebrated and able Thomas J. Michie, of Staunton. The prisoner broke jail before trial, but after an elaborate discussion of legal questions arising upon the non-liability of the prisoner for acts *flagrante bello*. They were decided in favor of the Commonwealth, but the escape of the accused put an end to the proceeding.

One of the most brilliant men who ever appeared in our history was Abel P. Upshur, Judge of the Circuit Court of the Eastern Shore of Virginia. I never saw him, but knew him through those who knew him best, one of whom was my revered uncle, Judge Beverley Tucker, law professor in William and Mary College.

His mind reached the realm of genius. He was a member of the convention of giants in 1829-'30, in which sat Chief Justice Marshall,

ex-Presidents Madison and Monroe, and John Tyler, who was afterwards President. The great men of the Revolutionary and early constitutional era were there. Among them were L. W. Tazewell, William B. Giles, Judge Philip P. Barbour, of the Supreme Court; Leigh, Johnson, Stanard, John Randolph, the Masons, Dromgoole, Cooke, Powell, Doddridge, Rev. Alexander Campbell, Duncan, Gordon, John Scott, John S. Barbour, Joynes, Morris, and many others.

Upshur opened the debate on the Basis of Representation (a most interesting phase of that problem in political science) in a speech profound and philosophic, clothed with an eloquence which placed him in the front rank of debaters, orators and statesmen, and was unsurpassed by any speech made in the body.

Judge Upshur wrote a very able and unanswerable review of Judge Story's work on the Constitution, on the question whether that instrument was the act of "one people" or of the thirteen sovereign States. It is a treatise on political philosophy in its application to our system, which I commend to the younger members of the bar, as an admirable vindication of the true and old Virginia view of the Constitution.

THE LONE STAR.

President Tyler called Judge Upshur to the State Department. He conducted the early negotiations for the reception of the "Lone Star" into the American constellation. He was in the field where his extraordinary talents would have had their legitimate range, but the fatal explosion of the Princeton gun closed a career which, had it continued, would have added great glory to his mother Commonwealth, reflected from the genius of her son.

My affection for Judge John Y. Mason will not admit of my omission of his name from these sketches. Who that ever knew him can forget the almost fascination of his personal character in social relations? His genial nature, his generous hospitality, his love of humor, and of all with which a liberal heart would sympathize in the life of others, and his charms as a conversationalist, made him a central object for the love and esteem of a host of friends.

His career was remarkable. As an advocate, his style must have been eloquent and persuasive, and on the bench of State and Federal courts, his manners were models of judicial dignity and courtesy.

As the idol of his party he was supported for the Senate of the United States in 1838-'39, but was never elected. In the Cabinets of Presidents Tyler and Polk he was alternately Attorney-General and Secre-

tary of the Navy. He was a member of the Convention of 1829-'30, and president of the Constitutional Convention of 1850. He was sent as Minister to France by President Pierce, and signed, with Buchanan and Soulé, the celebrated Ostend manifesto, and remained in Paris as Minister until his death in 1859.

My reminiscences would be imperfect indeed, where such a splendid type absent from the list of representative lawyers and judges of the period.

When I was a young barrister I went to Fauquier county to try a case before Judge John Webb Tyler, who had, after a distinguished service in the Senate of Virginia, been elected to succeed Judge Scott, who died in 1850.

No man ever had or deserved more devoted friends than this noble gentleman and excellent judge. He did not pretend to extensive learning, but he had a strong common sense, a quickness of preception, a promptness of decision, and a sense of justice which made him an admirable judge of the Circuit Court. So much was this recognized that he was assigned in 1858 as one of the judges of the Special Court of Appeals, for relief of the docket of the regular court, in which he gained recognition as an able and efficient appellate judge.

Without assumption, he was always dignified. His self-respect repelled insolence and commanded the respect of all, and the order and decorum of his court was not so much the result of judicial power as of the affection which all felt for the man and of their esteem for the presiding judge. In private life he was firm in his affections, true to all duty, and the most constant and excellent friend.

After a long and useful service on the Circuit Court of Richmond, the venerable and esteemed Judge Philip Norborne Nicholas, who had won distinction in early life as Attorney-General, was succeeded by a judge of whom I must now speak; for with him, as presiding in what was the Court of Exchequer for the Commonwealth, my relations for eight years were close and intimate, both personally and officially.

Judge John A. Meredith, whether in private life or at the bar or on the bench, was, always, everywhere, and in the highest sense, a gentleman. Genial and affable in nature, considerate and gentle in manners, scrupulous in duty, and honorable in every instinct of his soul, he was a type of the best gentlemen of Virginia. As a judge, he was careful, though not slow, in his mental work, but ever cautious lest undue promptness might lead to error in his judgments. His search

for the truth was zealous and conscientious. In his judicial action he felt neither fear nor favor; though he was sensitively apprehensive lest he should do injustice, and keenly alive to reaching the right in every case. His clear and discriminating mind, his diligent study of the law of his case, his sound judgment, when fully possessed of facts and law, were so combined with a suavity of temper, dignity of manners and innate sense of the proprieties in every condition as to make him a most admirable judge.

In my day he decided cases involving very large revenues of the State imperiled by the act of March, 1856, in all of which he was affirmed by the Court of Appeals, except in the greatly contested case of *Commonwealth v. Drewry*,* in which he was reversed. He decided, and was affirmed, as to a singular constitutional question involved in *Eyre v. Jacob*,† and he sustained the validity of the law passed authorizing the State to take the salt works, on just compensation, into possession, in order to the manufacture of salt for the supply of the people and army during the war at reasonable prices, holding that this was a lawful taking and for a public use. His decision was unanimously approved by the Court of Appeals, despite the splendid argument of a great advocate, the lamented John B. Baldwin, and the aid of his skillful ally, Charles L. Mosby.

Displaced by the military power, Judge Meredith returned to the bar, where, after years of signal success, he died here, honored by his State and beloved by a host of friends.

Among the able judges and excellent men who presided in our courts, before the year 1865, you will, I know, expect me to pay the tribute of my personal and professional regard to James D. Halyburton, so long the dignified, impartial and able judge of the Federal Court; always the genial, true and honorable friend of so many who still survive to revere and cherish the memory of his virtues.

THE BAR.

Having never been personally upon the bench, I may seem to have failed in these reminiscences to remember that I was not; and to have forgotten to descend from the bench to the bar. But *quaere de hoc*. Is it a descent? I shall speak for the true rank of my order.

How many opinions of judges, which pass as such to other generations, are made up by judicial scissors from the briefs of the bar, which

*14 Gratt. 1.

†14 Gratt. 422.

the reporter never publishes, and for which judges give no credit. In all ages the obligation of the bench, as the receiver as well as the inventor of thoughts, to the fertile suggestions of the bar has been fully acknowledged, though sometimes by inadvertence and sometimes it may be of purpose, the judicial plagiarist vaunts them as if his own.

It was the excellent habit of the older reporters to give the points made and authorities cited at the bar, as well as the opinions of the court. This was just to each, and the best mode of reporting, for it is well for the understanding of the judgment to know what points made by counsel the court considered, what it rejected as unsound and what it accepted as good law, and why. And, while no lawyer should work merely as an aspirant for fame, yet it is natural that one should dislike to be set down as zero in the report of a judicial procedure, when his genius has found and wrought and set the jewels which shine upon the brow of the dull-pated judge. To the new reporter this hint is given. *Verbum satis sapienti, Martino.**

After this digressive episode, I come to speak of the Bar of Virginia, as I apprehend its character from tradition, experience and observation.

When I came to Richmond as a boy, in 1835, I attended the then new academy, in a capacious building at the southeast corner of Marshall and Tenth streets. The building is gone. And oh! how many of my school-mates have left me almost alone to speak of those days so fast fading from memory. My heart shrinks from calling the roll of that loved band, most of whom have "sought the grave to sleep forever there."

JOHN WICKHAM.

In the square on Marshall street, opposite the academy, there were then but two residences, now compactly built up with numerous homes. One of these residences, at the southwest corner of Clay and Eleventh streets, was the spacious mansion of the celebrated John Wickham, one of the first in time, as in fame, of the great lawyers of Virginia.

My old and distinguished legal friend, Beverly R. Johnston, of Abingdon, has told me that when a young man he asked John Randolph which was the greatest mind he had ever known. To the inquisitive youth the then dying statesman replied, "John Wickham." And I have heard my father say, "Mr. Wickham would have been a great lawyer had no law books ever been written."

He was the leading counsel, except his wonderful client (as my

*The new Reporter is Mr. Martin P. Burks.

father told me, for he attended the trial in part), in defence of Aaron Burr, tried for treason in this city. Luther Martin, of Maryland, Benjamin Botts and others were associated in the defence, with George Hay prosecuting, aided by the famous William Wirt, a passage of whose speech, beginning with "Who was Blennerhassett?" was de-claimed by the boys in my day.

It is a pleasant reminiscence to have seen this remarkable man strolling in his garden, at a ripe and still intellectual old age, tall and not corpulent, with a countenance marked by strong features, a large Roman nose, large mouth and bright gray eyes, and I think his gray hair was bound in a queue—a very picture of the majestic simplicity and unconscious dignity of an intellectual gentleman and a noble type of the ancient bar of Virginia.

I remember, too, his cotemporary, the eminent lawyer and old reporter, Daniel Call, as he was in his infirm age walking the streets dressed in the "shorts" of the period.

LITTLETON WALLER TAZEWELL.

Wickham's great rival was, perhaps, the gifted, powerful and eloquent Littleton Waller Tazewell, of Norfolk, in the front rank of advocates; for some time in the Senate of the United States, a member of the Convention of Giants in 1829-'30; and he was elected Governor of the State in 1834, and resigned in 1837.

In the Supreme Court he was the peer of any who adorned that forum. He was about to meet the almost unrivalled William Pinkney, of Maryland, in the Santissima Trinidad,* who, tradition says, died from too intense study of the case in preparation to meet the great Virginia lawyer. Mr. Tazewell nobly denied the tradition, saying the case involved no very difficult points, and that Pinkney feared the face of no man living.

At the bar of the Court of Appeals at that early period, besides those just named, were Bushrod Washington, afterwards in the Supreme Court of the United States; Campbell, Warden, Ronald, McCrae, and many others, among whom I must name one, John Marshall, then in the fourth decade of his life.

Reading their arguments in the reports of Washington, Call, Henning and Munford, and discounting our tendency to revere the men of the past, I think we can hardly claim, even in our day, to rival a bar composed of Marshall, Wickham, Tazewell and their peers.

* Wheat, 283.

The veterans had passed away when, in 1835, I first saw the men of the Richmond bar. New men had taken their places.

The triumvirate, *primi inter pares*, in the decade 1830-'40, were (I name them in alphabetical order, for how else determine their precedence?): Chapman Johnson, Benjamin Watkins Leigh and Robert Stanard. In the reports of that decade these hold unquestioned pre-eminence.

Mr. Johnson was a great logician. Starting with primordial principles, he moved with majestic tread and with great deliberation to his almost irresistible conclusion. So subtle was his induction that it required great acuteness in his antagonist to detect his departure from the right line of reasoning in the successive stages of his progression; and in the *United States Bank v. Steenbergen*, so successful was his powerful argument as to disturb the balances of the judgment of Judge Smith, who presided at the trial at *nisi prius*. His celebrated antagonist, General Walter Jones, watching with impatience his triumphant march, with an acumen of which he was master, said to one of his colleagues: "He is a great sophist. It is impossible to answer by following him; he can only be met by reversing his reasoning and by proving his conclusions, final and successive, to be errors, because contrary to established decisions and to principles settled by authority. This will prove the radical fallacy in his reasoning, which cannot be well exposed by following his steps."

I have often heard him when I knew nothing of law, and after I came to the bar. He impressed me, as he did his compeers, as a noble type of a powerful advocate, an honorable man and learned lawyer. He was in the General Assembly a short time, and in the convention of 1829-'30, where he displayed great ability, but with less success than at the bar.

Mr. Leigh was a close friend, though a rival, of Johnson. His mind had diverse qualities from those of that great foeman. He met his logic with the sagacity of genius, which discerned the truth from afar; and he reached his conclusions by a rare perspicacity which detected fallacy with analytic precision and exposed it with a perspicuity of style, in which he was unsurpassed. Pure streams of the best English ran in the deep channel of his clearest thought. Error entrenched behind a fortress of logic was compelled to yield to the force of his argument, based on general principles, and to his favorite *reductio ad absurdum*. Besides, he wielded the weapons of satire and invective,

which at the bar and in the Senate of the United States made him eminent as a debater and prominent as a leader.

In the convention of 1829-'30 he held a masterful position. He, with the Charlotte statesman, were the chief champions of the East; they counselled together and fought side by side in friendly alliance. With that liberality of nature which excluded jealousy, he wrote my father these words: "By the way, let me tell you for your comfort, John Randolph rose to stupendous magnitude in the convention. As a public speaker there was no man who came within a thousand miles of him. But that was a trifle. He brought more of the statesman to the convention than all the rest of us put together."

A FLANK MOVEMENT.

Robert Stanard was a profound student of the primordial principles of law. He was, though, occasionally in the General Assembly and in the great convention, always and everywhere a lawyer. With great acumen and analytic power, cases were subordinated to the principles on which a contention depended. While his style was not so easy and perspicuous as that of either of his rivals, the thought was always clear; and so adroit were his tactics (I get this from one to whom I am infinitely indebted) that he would sometimes, in the midst of a seeming disastrous rout, by an unexpected flank movement, snatch success from his foe, and change defeat into victory.

This triumvirate had competitors, inferior, it may be, but not *longo intervallo*. If I had time I would love to sketch them.

John Robertson, a most subtle and acute thinker and forceful advocate, once Attorney-General, then in Congress, and then chancellor of Richmond; John R. Cooke, well-named in Winchester as the "Law's Goliath," whose genius for statement of a case was such that President Allen said no argument was needed to sustain it; Samuel Taylor, a strong and excellent lawyer; Conway Robinson, whose studious life made him as counsellor and advocate most learned and formidable in all forensic contests, and enabled him to achieve a fame as author of his elaborate work of practice, which is recognized in England as well as America; R. Travers Daniel, the brilliant Sheridan of the Virginia bar; S. S. Baxter, Attorney-General of Virginia, and a most able lawyer; James Lyons, bold, eloquent, aggressive, and full of resources, native and acquired, as an advocate before juries and courts, and withal a splendid gentleman, whose generous nature and free hospitality so many of us recall with affection; William H. McFarland, a man of

finance, as well as lawyer, accurate and able in forensic combat, as he was honorable and fair, and one of the most charming of friends in the social intercourse of his home; Joseph Mayo, the criminal lawyer and author; Robert G. Scott, one of the most efficient criminal lawyers of the State; Peachy R. Grattan, the reporter of one-third of our cases, an accurate and honorable counsellor, and one of the most excellent of Christian men; G. N. Johnson, son of Chapman Johnson, and Robert C. Stanard, son of Robert Stanard, both able and worthy representatives of their great ancestors; James A. Seddon, who, whether at the bar, in Congress, or in the Cabinet of President Davis, was acute, accurate and able, and always an honorable gentleman; Arthur A. Morson, a partner of Seddon, coming to Richmond after 1840, was eminently successful as an earnest and conscientious counsellor, and as a vigorous and resolute advocate in the cause he espoused, and admirable and noble in private life; the accomplished Meredith, of whom I have spoken, and his old partner, John B. Young, *semper paratus*, and a formidable, though fair, foeman; that strongest scion of Jefferson, profound as a lawyer, skillful in forensic debate, as on the floor of the convention of 1861, a brave soldier, and an able Secretary of War, the esteemed and honest George Wythe Randolph, whose last speech upheld the conscription act in *Burroughs v. Peyton*; the fertile and resourceful lawyer in all branches, but the prince of criminal advocates, our living friend, William W. Crump; the solid, forcible and learned jurist, James Alfred Jones; the eloquent advocate in forum and on hustings, Patrick Henry Aylett; the clear-headed, lucid and cogent debater, my old school and college-mate, John S. Caskie; the brilliant wit and charming companion, as well as effective advocate, Thomas P. August; the thorough and very able chancery lawyer, John O. Steger; the accurate pleader and master of chancery practice, Nathaniel P. Howard; Henry L. Brooke, whose arguments, Judge Scott said, might always be closed with the mathematical Q. E. D.; the genial and excellent barrister, Andrew Johnston; the accurate and careful master in chancery, Thomas J. Evans; the pure heart, noble manners and sound judicial head of Judge William H. Lyons; the laborious, systematic and exemplary men of legal business, Gustavus Myers, Thomas T. Giles, Peter V. Daniel, Jr., and since the war, the sagacious counsellor and sound lawyer, Isaach H. Carrington; and how many more, not forgotten, but for want of time to be omitted in this prolonged roll of former worthies.

AFTER THE WAR.

But, in this review, I cannot forebear to speak of those men who came to this bar after the war.

Robert Ould was gifted with an intellect brilliant and profound; with an eloquence persuasive and cogent; with learning more broad than technical, yet skilled in all the arts of accurate and expert practice, and a patriot whose service in the war in his important duty of exchange of prisoners deserves the highest praise for its sagacity and prudence, for its firmness, tempered with mercy, and for honorable and able diplomacy. As a gentleman and a friend, who can ever forget him? Can any of us ever fail to associate with the memory of President Moncure, the touchingly pathetic and prophetic eulogy of Judge Ould, who so soon followed his illustrious chief to the grave?*

Legh R. Page, who so lately passed from your ranks, was a thorough and profound lawyer, a forcible advocate, a sound counsellor and honorable man, and a friend whose value all of us sadly estimate by our sense of recent loss in his death.

In 1857, in attending the Court of Appeals at Lewisburg, I formed a personal and professional friendship for a young man who has just passed away from the foremost lawyers of this bar, Colonel William W. Gordon.

In *Poindexter v. Jeffries*† I was associated with him, and his full and profound discussion of that case, which excluded any need of further argument on our side, gave me a prophetic assurance of his after eminence.

His special talent was for the analytic mathematics, in which he was well grounded, and his arguments were adaptations of "applied mathematics" to the law. Who can forget the keen and incisive method by which, through a jungle of facts, he reached the pivotal issue of a case, and the simple, clear and lucid style and eloquent logic with which he expounded the grounds of his contention?

I shall never forget the generous aid he rendered me, to whom he accorded the privilege of the oral argument in the great case of "*In re Ayers*,"‡ in the Supreme Court, which was only an instance of his uniform, honorable and magnanimous conduct as a gentleman and lawyer.

* 76 Va. XV.

† 15 Gratt. 363.

‡ 123 U. S. 443.

One other gentleman, recently passed away, won high distinction at this bar, whom I greatly esteemed as a man, but only knew of his merits as lawyer and advocate from the general verdict of his professional brethren—who can fail to recognize in this reference the pure, able and honorable counsellor, the forensic chevalier, John H. Guy.

Nor can I refrain from paying the tribute of my affectionate esteem to the memory of one of the most sincere of Christian men, and one of the most eminent judges who ever held a court of equity in Virginia, your own spotless Chancellor, Edward H. Fitzhugh. Nor will I divorce from his name, in this passing notice, the memory of his senior partner in the law at Wheeling, the eloquent advocate and eminent lawyer and statesman, Charles W. Russell, whose ability as jurist and patriotic representative of his people in the Confederate Congress placed him in the front rank of the public men of his day.

I have seemed to forget two remarkable men, whose position at the bar of the Court of Appeals was very commanding. I have done so of purpose, to speak of them now with proper fullness.

JOHN M. PATTON.

Before the sun went down upon the glory of the great triumvirate, John M. Patton came to Richmond, in 1838, and entered the lists at the bar of the Court of Appeals, where he stood without a superior in public favor for twenty years. He had been distinguished in Congress, and had cultivated the art of public speech there and on the hustings, as well as at the bar.

Associated with him in some cases and antagonized in others, I learned to measure his powers with feeling appreciation.

In learning he was not equal to many of his compeers, but in his thorough study of his case, and in a sagacious comprehension of its strong and weak points; in his quick detection of the strategic point of attack upon or by his adversary; in his keen insertion of his rapier into the open joints of the harness of his foe, and then in driving the deadly weapon to the hilt with fatal force, Mr. Patton had few equals, and no superior. He had wit, humor and invective, delivered with an earnest, almost passionate vehemence, which, in connection with his compact and aggressive argument, placed him in the front rank of advocates at the bar of this ancient capital.

In social life he was genial and hospitable; he had fine powers of conversation; his friendships were firm, and his family ties strong and faithful. In the public service he was patriotic, and as co-revisor with

Mr. Conway Robinson of the Code of 1849, he received, as both merited, the applause of the profession and the public.

WILLIAM GREEN.

The second omitted name is William Green.

He was the eldest son of his learned father, Judge John W. Green, who died in 1834, while on the Court of Appeals.

Mr. Green was a systematic and thorough student from his young manhood. He told me that all the ancient learning on treason, profusely cited in his petition for appeal in *John Brown's case*, was taken from his own annotations on Hale's Pleas of the Crown, made when he was eighteen years of age.

His library reminded you of a forest, each book a tree, marked by his pen, in his peculiar way, as a corner tree (that is, an original decision); or as a fore and aft tree, on whose margin were annotated all cases *in pari materia*, which preceded, and all which followed it, down to the latest report.

No law question ever found him unprepared. In an instant, to any inquiry on the street, he would start the game and pursue it until captured. He knew some case bearing on it, and, finding it, it referred to all that was needed.

It was a treat to be with him in a case; not always against him. If with him he liberally endowed you with all he knew, and, not jealous of any point you might suggest, would lavishly and with generous zeal pour out upon you the cases which would uphold your new suggestion. He was a magnanimous ally.

And, if opposed to you, so loyal to the law was he, that he cited cases which you could utilize, though, while his candor impelled their citation, he would insist he could show they were not in accord with the weight of authority.

My learned and lifelong friend and kinsman, Judge H. H. Marshall, will remember, no doubt (for he sat on the Special Court of Appeals in the case), that in the argument of the case of the *Richmond, Fredericksburg and Potomac Railroad Company v. Virginia Central Railroad Company and Orange and Alexandria Railroad Company*, which was very full and made by able counsel, to-wit: J. A. Jones, Morson and Macfarland for appellant, William Green and Robert E. Scott for one appellee, and Mr. James Lyons (I was with Mr. Lyons) for the other. The appellees pressed the point that no precedent could be found for a practical decree in such a contest. The difficulty,

we insisted, was insurmountable. No case had been found by appellants to answer our challenge.

Imagine our unpleasant surprise, when Mr. Green, our ally, with high exultation, said that in his eager research he had found but one case, and it was so absurd and anomalous that he cited it only triumphantly to expose it to complete refutation. I have no doubt he did do so; but, unfortunately, the Court took the case as a precedent, and did not accord the palm of victory to the author of the refutation. We lost our case, but he preserved his loyalty to the law, and manifested his magnanimous candor to Court and to foe, though with less satisfaction to his allies.

I think I do no lawyer at our bar any injustice—I go further, none at the American bar—when I assert, as I firmly believe, that for fullness and accuracy of learning, for juridical erudition, for an intelligent comprehension of all fundamental principles, as well as for knowledge of cases, no lawyer of his time was his equal.

All honor to the memory of this friend, the most learned of lawyers, the most candid and magnanimous of advocates.

THE BAR OF THE OLD COUNTY COURTS.

But what shall I say of the bar at the Circuit and County Courts away from the Capitol?

It is strictly true that a large proportion of those already spoken of, who gained eminence in the Appellate Court, were trained at the bar of County and Circuit Courts, and that training showed its excellence in their prowess displayed in the Court of Appeals.

The cause and influence of this training, it is a pleasant task, I assume concisely to explain:

The county bar of Virginia was a class *sui generis*. Their peculiarities were due to the character of the chief tribunal before which they appeared—the old County Court of Virginia. It was institutional, not constitutional. It came to Jamestown in 1607, and never perished until the Constitution of 1850. It was the old Saxon shire-moot, with the powers of a little Commonwealth in itself; the nucleus of local power over local right, which is the essence of liberty everywhere; a copy of the Teutonic institutions, brought from the forests of Germany, with legislative functions over local interests, limited by law, and with judicial functions which disposed of more cases (in the convention of 1829–'30 Judge P. P. Barbour said four to one; Morris, of Hanover, added ten to one) than the Circuit Courts.

These courts, said Marshall, Chief Justice, in the convention of 1829-'30, are composed in general "of the best men in their respective counties." This had confirmation, if any were needed, from Governor Giles, Leigh, Johnson, Barbour and others. They were home tribunals, whose justices served without pay, *mirabile dictu!* for which reason, as they could make no fees by litigation, they discouraged it, and were thus entitled to the divine beatitude, "Blessed are the peacemakers, for they shall be called the sons of God."

The Chief Justice, who was originally a County Court lawyer in Fauquier county, added: "These courts must be preserved; if we part with them, can we be sure that we shall retain among our justices of the peace the same respectability and weight of character as are now to be found? I think not." Judge P. P. Barbour concurred. I pause for a dissent.

Mr. Leigh said that these county courts, composed of the most intelligent men, some retired lawyers, follow the principles of natural justice, while judges are often perplexed and bewildered by a set of technical and artificial rules. He added: "I have seen county courts which were among the ablest tribunals before which I ever practiced, not excepting the Court of Appeals."

Such men as Governor Giles in Amelia, James Marshall (brother of the Chief Justice) in Frederick, Judge Pendleton in Berkley, and others I could name, presided in those courts. Their decisions stood the test of the appellate review with the praise of the greatest judges, and very often, when reversed by a judge of the circuit, were affirmed by the Court of Appeals.

Mr. Jefferson was a justice of his county; and it was a patriotic impulse of men of long experience, in retiring from public life, to give their time and talents to the judicial duties of these venerable home courts.

Before these courts the country lawyer argued cases upon the foundations of justice, upon the very right, without much reference to authority.

Who were these country lawyers? Pardon me if I reproduce in substance what I was glad to say in the House of Representatives in some remarks on the death of my old school-mate, Beverley B. Douglass, of the two respects in which our old county court system trained men for the forum and for the Senate. The court demanded proof of the real justice of the case, and the lawyer, without a library, was com-

pelled to evolve from his own mind the reasons which established his contention.

The country lawyer was a planter as well as a lawyer, and thus his professional life was developed, according to a type so peculiar in Virginia and other parts of the South.

THE COUNTRY LAWYER.

“This is a character which is now fast passing away, which I would fain rescue from oblivion. Such a lawyer lived upon his farm, which he cultivated, and attended the courts, without any strict devotion to business in his office. His library was not measured by the number, but the weight of his books. He read and mastered Bracton, Coke, Hale and Blackstone. His reports were few—My Lord Coke’s, Sal-keld, Saunders, Atkyns’, Equity Cases and the like. He read history much and studied the human heart profoundly. Amid the mountains, hills, valleys, forests and fields about his country home, he meditated much upon natural law. The principles of right and justice, implanted in the instincts of our nature and deducible from observation and experience, he evolved from his own native intuitions and reason. He wrought out by original thought what law ought to be, without learning much from the decisions of the judges; and thus, in ninety-nine cases in a hundred, he found what was the law in any special controversy. He was less technical than the city lawyer, skilled by ample practice and full libraries in the infinitely varied phases of social contacts and contracts. He was less scientific, but more philosophic; his views were less astute, probably, but certainly more broad and fundamental, and his generalizations were perhaps less accurate, because deduced from a less number of particulars.

“The law he learned was that whose ‘seat is the bosom of God, and whose voice is the harmony of the world:’ *Nec enim alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes, et omni tempore, una lex et sempiterna et immutabilis continebit.*

“It was by this self-discipline, by this evolution of law as a system of real right, of absolute justice, in the political, social and domestic relations of men, from the profound study of human nature and of the records of human history, that Patrick Henry, the country lawyer of Hanover, was enabled to write upon the fly-leaf of his Coke upon Littleton those resolutions of 1764, proposed in the Virginia House of Burgesses, which challenged George III. to remember Cæsar’s fate and the bloody scaffold of Charles Stuart; to strike the key-note of re-

ligious emancipation when he pleaded for the people against the parsons; and to forge the thunderbolt of revolution in the proclamation of his sublime dilemma of 'Liberty or Death' to the colonies struggling in the military grasp of British despotism.

"I do not doubt that John Marshall, the most illustrious of the chief justices of the United States, under the classic shades of his country seat at Oak Hill, framed the inexorable logic of his argument in the case of Jonathan Robbins, and constructed those canons of interpretation in that series of marvelous judgments, which laid the foundation of his fame as the greatest expounder of our Federal Constitution.

SCHOOL OF NATURAL LAW.

"Time fails me to tell of the judges who were trained in this school of natural law for the science of jurisprudence. Pendleton and Wythe, Jefferson and Madison, John Taylor and Roane, and a host of others, are a galaxy of great statesmen who were also thoughtful jurists, though not case lawyers; taught by a profound knowledge of human nature and a large and varied experience in human affairs to rear the temple of a sound jurisprudence upon the deep foundations of natural justice and upon the law of God.

"In my own life I have known scores of such men, whose broad and comprehensive views of right and wrong, and whose acute and powerful minds thus trained, made them the equals and frequently the superiors of other lawyers, learned in cases and trained by the reading of law books and reports without end.

"Mr. Douglass was such a lawyer. Far less well read in reports than many of his cotemporaries; but, with an acute and powerful mind, analytic in its processes and clear and intuitive in the detection of a fallacy, logical and cogent in reasoning, full of satire, sarcasm and humor; overwhelming in invective, with literary taste and culture to add grace and ornament to his argument, he was the peer of any of his associates at the bar and the superior of most of them in his genius as an advocate before the courts and the most intelligent juries of his country.

VIRGINIA HUSTINGS.

"But there was another arena upon which he attained an excellence even higher than at the bar.

"The hustings of Virginia from an early period has been the scene, as well as the school, for the highest powers of debate.

“The county courts of Virginia, meeting every month, have been the occasions in all her history for the assembling of the people, and were the Virginia shire-moots. On court day the representatives of opposing political parties met upon the hustings to discuss public affairs. The people heard both sides, quietly and fairly.

“The debaters divided time—opened, answered, replied and rejoined. In the olden time the country people listened in dignified silence. The clap-trap of the demagogue was but little heeded. With sound sense and true eloquence principles were expounded and facts were arrayed which carried the day. All the resources of reason, oratory, wit, humor, invective and satire were called into play. Misrepresentation was corrected by the adversary, detraction was subjected to censure, and fallacy in reasoning to exposure.

“This institution of our society was a discipline to the gladiators and a school of instruction to the people. It begat fairness, candor and sound reasoning in the debaters, and furnished the people with the materials of a just decision upon the great questions of the day. I may be excused for saying that one of the most memorable debates which authentic tradition has given us occurred upon the hustings at March court, 1799, of Charlotte county. The greatest orator of America made his last, and his successor to the confidence of his people made his first, speech; and thus, as the sun of Henry sank below the horizon in its evening splendor, that of his youthful friend rose into the firmament in its morning glory.

“These were the training schools for the bar of Virginia. The tribunal demanded what the lawyer was compelled to furnish or fail in his cause. All the powers of the advocate were called forth, and his victory depended, not on the comparative weight of conflicting authorities, but on the preponderance of reason and the arbitrament of truth and justice.”

It was my fortune to start life at a time when the full force of these training gymnasia had developed the bar of Virginia to its highest powers, and the exigencies of my life have given me opportunity and experience to see the results.

In my native town I was at the centre of a field of practice which embraced eight counties, where I went and mingled with the local bar in each of them.

Winchester had been the seat of the Chancery District Court. The bar there had always been able. Judge Hugh Holmes was an admira-

ble type of the class. Quick of apprehension, ready in debate, full of resource in all the phases of practice, he achieved high reputation as lawyer and judge. John R. Cooke, Alfred H. Powell and others left the traditions of their powers as advocates, which my generation delighted to recall.

Permit me to call a roll of the lawyers of that day in my town and the surrounding counties:

There were the vigorous and eloquent Hunters, and the refined and acute minds of the Pendletons; there were Lucas, Berry and Lee, Worthington and Bedinger, Charles J. Faulkner and D. Holmes Conrad, John Blair Hoge and Young Peyton Harrison, who with his young cousins Conrads, three grandsons of Judge Dabney Carr, fell together on the field of first Manassas,—all on the Potomac border. Of these Mr. Faulkner achieved a wide reputation for his immense capacity for labor, his intense purpose for success, and for the concentrated energy of his astute and vigorous mind in the conduct of his cause, and was distinguished in Congress, and was the Minister of the Government to France. The practical legal knowledge and indomitable energy of Province McCormick; the steady and judicious Giles Cook, and the upright, diligent and excellent lawyer, Robert H. Turner; the systematic and well-poised intelligence of Mark Bird; the learning and ability of Judge G. B. Samuels; the astute and vigilant mind of Judge J. W. F. Allen, and the laborious and excellent Walton; the fine powers as an advocate of William Seymour, of Hardy; the resolute and aggressive McDonald, and his competitors, Judge Armstrong and the Whites, and the learned student lawyer, Judge T. Claiborne Green, of Hampshire, make up a list of some men whom the Winchester bar met in the surrounding counties.

At home we had lingering at the bar James Marshall, who would have attained the highest position in the profession had not his fortune and a certain shrinking from the heat of conflict made him retire from active practice to the position of counsellor, and these duties assumed with great reluctance. His original powers were very great as an acute analyst and for broad and accurate generalizations, and these with his profound learning in the principles of law made him *facile princeps*, and, in the opinion of many, not inferior to his great-uncle, the Chief Justice.

James M. Mason, Representative and Senator in Congress, though not a great student of law, was one of the most formid the men in

forensic contests at the bar. In the appellate courts of the State and Federal Governments he argued his cases with consummate power of statement and with clear and massive reasoning. He represented the Confederacy in England; was one of the captured envoys of his Government by the Trent, and lived and died, after all the personal vicissitudes which attended the fall of the Confederate Government, the most devoted, patriotic and loyal lover of Virginia. He was a splendid type of that ancient *regime* among whom his ancestor, George Mason, of Gunston Hall, stood in intellectual power the equal of the best.*

Robert Y. Conrad was unique in his mental organism. With subtle and metaphysical powers which were capable of indefinite refinement in reasoning, he was possessed of a perspicuous and simple faculty of exposition which almost enabled him to make a plain jury comprehend the abstruse problems of Mr. Fearne on remainders. He was the most consummate expounder of difficult questions of law to common minds I ever heard. He had an imagination for profound speculations without any play of fancy, and, while intensely admiring fiction and poetry, his style was so simple and almost prosaic as to be always within the range of his audience. He had sound learning in his profession, and studied the principles of his case so thoroughly that he easily met the authority of cases loosely paraded against him. His manner of speech was so serious and sincere that it was, as Mr. Wirt once said of Chief Justice Taney, almost sacrilege to discredit his argument. Under him, as his junior partner, and with him as a devoted, lifelong friend, I must be excused for this special tribute to his merits.

A DANGEROUS ADVERSARY.

Mr. Philip Williams was, take him altogether, the most dangerous and efficient adversary I was compelled to meet. *Semper paratus* in all cases from the Court of Appeals to a warrant before a justice, an expert in the clerical work of practice, with a full knowledge of men in all conditions, with an astute common sense, which took hold of plain men, he had full learning in principles and in case law, and a skillful mode of applying them, and withal, a clear and persuasive style of reasoning, which made him hold an equal position with any in the adroit and effective management of his case. When I left Winchester I told him he had been my best teacher by so often beating me, and he applied the scourge with the effectiveness of an ancient pedagogue but with the amiability of a loving brother.

* Author of Bill of Rights and Constitution of Virginia of 1776.

His partner, Mr. David W. Barton, was no speaker, unless forced to it, and then he spoke well and to the point. He was an eminent business lawyer, excellent in chancery practice, and skillful in the preparation of a case for his partner to argue. Of fine culture and a lover of literature, he was a delightful companion, and in the draft of law papers showed the result of careful and ample education. His judgment was sound, his wit was quick and sparkling, and his professional success commensurate with his fine abilities.

Mr. Richard E. Byrd was a lawyer of ample ability and learning, and in the preparation and conduct of his cases he was absorbed by the purpose to succeed, and was aggressive in his tactics to attain his object. He stood in high rank with his competitors, but his health impaired his capacity for labor, and, I think, he bestowed too much labor on all his cases to make it possible for him to do so with a very large practice. Despite these drawbacks, however, his success and attainments placed him in the front rank of his cotemporaries.

Others I might mention—the late Judge Sherrard, whose excellence of character and courtly manners endeared him to all who knew him; the sound chancery lawyer, and admirable Col. Hugh H. Lee; the brilliant and accomplished Joseph Tidball; and, except that he still lives, Governor F. W. M. Hollyday.

LOUDOUN AND FAUQUIER.

Quite early in my practice I attended the courts in Loudoun and Fauquier counties, and after the war I resided in that region of the State for several years. Of that noble band of brothers, with whom I was then associated, whose homes were mine—of General Hunton and General Payne; of J. M. Forbes, J. V. Brooke and Taylor Scott; of Howard Shackleford and Spilman; of Thomas Smith and A. D. Payne; of Col. John S. Mosby and John Scott, and others—I could speak volumes of affectionate praise, but I forebear to speak of the living in person, and shall speak of those who live only in memory, with one exception. He was a young man at Warrenton in 1865, to whom I gave counsel and advice as to his legal studies, and the direction of his aspirations. He followed these with such fidelity and constancy that I am honored by aiding in giving him welcome here this evening as the new President of the Court of Appeals.

Of the lawyers in those counties who have long passed away, memory recalls more readily the names of Robert E. Scott and Samuel Chilton, of Warrenton, and John Janney and Burr W. Harrison, of Leesburg.

Mr. Scott was one of the most powerful speakers I ever heard. In the General Assembly, in the convention of 1850 and of 1861, before the Court of Appeals, or a Circuit Court, or before a jury, he had a capacity to combine circumstances in such a network of reasoning as to resist all the efforts of his adversary to break it. In my estimate of the ablest advocates I have ever known, while it would be invidious to exclude any, Robert Scott would be included in the list beyond all question. He required time for preparation, and was not quick or ready in taking his positions; but when reflection had completed his plan of attack or defence his adversary always found him fenced and guarded at every point, and his array of forces was almost resistless in attack or impregnable in defence.

His friend and compeer, Samuel Chilton, was a fine lawyer and an able advocate, and as a social companion he was one of the most charming raconteurs I ever knew.

John Janney was a very imposing speaker, a fine lawyer and an admirable man. President of the convention of 1861, he presided with conspicuous dignity, and during the war which ensued he was a true and brave patriot in his devotion to the cause of Virginia and of the Confederacy of which she was a member.

Burr W. Harrison was without pretension, but was a most accurate and sound lawyer, thoroughly versed in the principles of law, and with ample supply of case learning for efficient service in the conduct of a large practice. His simple and honorable character was a heritage prized by his sons, who succeeded to his practice, and it was not only kept by them without stain, but transmitted to their sons with increased value. For who that knew the steadfast integrity, the faithful and conscientious devotion to personal and professional duty, and the vigorous mind and full learning of Matthew Harrison, and the scarcely less admirable qualities of his brother, Powell Harrison, will refuse to unite them with their father in a common tribute to private and professional worth? Nor can I fail to name those who were near of kindred to these—the Powells, long since passed away; and my own law partner and cherished friend, the true and faithful lawyer, and the patriotic public citizen, the estimable Maj. Burr. P. Noland.

THE UPPER VALLEY.

Among the members of the bar of the Upper Valley, it is hard to decide which are entitled to pre-eminence.

Tradition presents the memorable name of Gabriel Jones, the confi-

dential counsellor and executor of Lord Fairfax, who for sixty years held first place at the bar of Rockingham county. After him came the eloquent and powerful advocate, Robert Grey. These I never saw, and only mention as tradition represents them.

In the olden time Staunton furnished John Howe Peyton and Daniel Sheffey and Judge Baldwin as a trio of very great ability. Their fame in public councils, at the bar and on the bench needs no special tribute from me; as my personal reminiscences do not embrace them, except in the kindness of Mr. Peyton and Judge Baldwin to me as a young man. Within my own memory, the names of Thomas J. Michie, A. H. H. Stuart, Hugh W. Sheffey and John B. Baldwin claim easy pre-eminence among those who have passed away.

Mr. Stuart's fame as a lawyer is second to his reputation as a public statesman, but in both departments he was eminent. As a Representative in Congress, a leader in both houses of the General Assembly, and as Secretary of the Interior in President Fillmore's administration, he won merited distinction.

Mr. Michie was like his uncle, Chapman Johnson, a great legal logician, and was in ability, as a profound lawyer and as a remarkable advocate, hardly inferior to Mr. Johnson.

Judge Sheffey, in laborious and careful preparation, in acute perception and discriminating examination of cases, in unflagging energy, in the summoning of every possible means to secure success, and in general learning as a lawyer and skill as an advocate, was deserving of the highest praise. As judge and practical lawyer he won the confidence of the public and the sincere respect of the profession.

I knew John B. Baldwin well. He inherited from his eminent father, Judge Baldwin, the right to professional fame; but he, by original power, greatly enlarged his inheritance.

In the rapid apprehension of the real issue, in the vigorous grasp of the facts and points of his case, in the versatile powers of reasoning, illustration, wit, humor and invective, he was indeed a great advocate. Self-reliant to the highest degree, brave and intrepid, mentally, morally and physically, with a strong sense of right and a detestation of wrong; with a devotion to truth which was intolerant of deceit, fraud or chicanery, John Baldwin was most formidable as an opponent, and equally so as an ally. He had no envy, and hence was not capable of detraction; he had great self-esteem, while magnanimous to the merits of ally or foe.

His death was a public calamity. He died at a period when "one blast upon his bugle horn were worth a thousand men," and in the confusion which has succeeded we missed his ponderous blows to win the battles of our people.

THE WAR GOVERNOR.

John Letcher, the war Governor, was a type of the lawyer whose power was in a sense of justice and not in technical or case learning. In all the skirmishes which precede the general battle, Governor Letcher might be worsted, for his plain but strong sense was not appreciative of these, but when the fight was on the merits he was a foeman worthy of your steel. His vigorous aggression would sweep away all flimsy pretexts to defeat the claims of justice, and he would win by the force of truth, armed in the maintenance of the real right.

His public career is history; and his biography is "Honest John Letcher."

Judge John W. Brockenbrough was in learning and native ability entitled to a foremost place in the ranks of the profession. He had been a profound student of law all his life, was patient and thorough in preparation and vigorous and impressive in argument. As a teacher he was conspicuous for thorough and sound instruction. As lawyer, judge, and man he had a notable personality as a brave and honorable gentleman and a devoted patriot to his mother Commonwealth.

Judge William McLaughlin was a law student of Judge Brockenbrough, and has by his distinguished service of nearly a quarter of a century done honor to his instructor in the display of judicial talent of a high order, in the Circuit Court.

A typical and unique specimen of the County Court lawyer was James D. Davidson, of Lexington. He was an excellent chancery practitioner; and during the time of Judge Sheffey, in a friendly suit for partition, he, in playful fancy, drew bill, answers and final decree in poetic verse; and the learned judge entered the decree, with the reservation that it was not to be drawn into precedent.

Time fails me to speak of other men of power in every part of the State—of the Dormans, the Andersons, the Millers and the Logans; of the Prestons, the Floyds, the Johnstons, the Campbells, the Triggs; of Stras, Sheffey and Wysor; of Caperton, Judge Staples, Chapman, Price and Smith; of Blackburn and Terrell; of Summers, Doddridge, Pindell and McComas; of Judge E. C. Burks, the subtle Charles L. Mosby, Speed, the Goggins and the Garlands (of whom the youngest died in battle for his

State); of Claiborne, Thompson and Coghill; of the vigorous Whitehead and the learned Pettitt; of the gifted Irvings and the intellectual Bococks; of Fleming and Pleasants, the Leakes and Ivanhoe Cocke; of my brilliant friend, John T. Thornton, who died for his country on the bloody field of Sharpsburg; of the Flournoys, of Edmunds, the Goodes, the Marshalls, the Barksdales, Taliaferro and Whittle; of the exemplary Nimmo, of Robert B. Taylor, of the estimable and learned Tazewell Taylor, and the able Millson; of Dromgoole and Shell, of Chambliss, Holleman, Atkinson, Whitfield, Hayden and Kilby; of President John Tyler, Southall, Seawell and Taliaferro; of J. Thompson Brown, the Mays, the Gholsons; of Wallace, Campbell and John W. Jones, Speaker of the House of Representatives; of the Maryes, the Bartons, the Herndons and the Littles; of the Taylors, Smith, Brent, Beach, Thomas and Love; of R. M. T. Hunter, Joseph Christian, M. R. H. Garnett and R. L. Montague; of the elder Joynes, of Bayly and Fisher; and of that orator—lawyer—statesman—soldier, Henry A. Wise; of Wiloughby Newton, the Walkers and Masons; of the Barbours and Greens, of Governor Smith, Strother and Pendleton; of the Shackelfords and Gibson, of Moffatt and Menifee, of that gallant soldier, lawyer and statesman, Governor James L. Kemper; of Hunton, Forbes, Brooke, Green and the Paynes; of Professor Davis, of the Gilmers, the Southalls, the Minors; of Wm. J. Robertson, Watson, Rives and Leake; the praise of these, and of how many more, time fails to mention, is in the hearts of their professional brethren, and is recorded in their country's annals.

Will I be pardoned for closing this review of the country lawyers of Virginia by sketching a scene which is historic and has its parallel in a late work of a great German jurist?

While living in Richmond I attended, as a candidate for practice (but, like many candidates, I failed of election), the courts of Louisa county. Its people and its bar were true types of old Virginia. I could draw a picture of an old planter, whose costume was so plain and cheap that a pauper would hardly wear it, but whose acute and imaginative genius expressed its thoughts in words of vigorous eloquence on the public questions of the day, citing, with analytic discrimination, the views of Adam Smith, Ricardo, Say, and the other writers on political economy. Such people were not exceptional, but were found on many court-greens in old Virginia.

LOUISA LAWYERS.

Only one or two lawyers lived at Louisa courthouse. One was the excellent Lucien Minor, a brother of the distinguished Professor John B. Minor, of the University of Virginia. Other lawyers attended from the neighboring counties. Let me summon, like the prophet in the Valley of Vision, these dead magnates, that they may stand in living presence before you to be remembered forever.

General William F. Gordon, the planter, lawyer, the eloquent and charming public man, who, as the proposer of the sub-treasury, as a member of the great convention of 1829-'30, and as the patriot son of Virginia, deserves to live freshly ever in my memory; John S. Fleming, of Goochland, a country lawyer, strong and logical in argument, with a flow of pure English which made his thoughts glow with his brilliant rhetoric; William Green, of Culpeper, the learned, of whom I have spoken; Alexander R. Holladay, of Spotsylvania, whose clear and massive mind, with a lucid and simple style, made his short speech unravel the tangled intricacies of the most difficult case with such effect as to be a sufficient reply to the longest arguments of other men; a man with ambition for real excellence, but never for place or personal power or personal honor; Marshall Ambler, of Louisa, my friend and helper in those days; the genial and courtly Joseph K. Pendleton, and Colonel John Woolfolk, of Orange, distinguished for sense and public spirit and private integrity. Then came the younger men—William J. Robertson, James L. Gordon, Eugene Davis, Thomas Watson (just dead), J. R. Mosby, Peter Carr and Rawlings. The orator, Richard Morris, from Hanover, the land of orators, had died but a few years before.

THE GENUINE TYPE.

These were genuine types of the country lawyers of Virginia.

Judge Richard H. Field was the judge of this circuit. He was simple and plain in manners, true and loyal in integrity, and a lawyer of large practical experience and common sense more than of case-learning. He was quick of apprehension and rapid in reaching conclusions; not elaborate in writing opinions, but like lightning in forming and deliverng them. And yet it was his rule to allow no one to argue against them, however promptly delivered, with *one* exception.

He loved General Gordon, the senior of the bar. General Gordon on one occasion proposed to show that His Honor's quick judgment

had been erroneous. The Judge reminded him of his rule. The General, with a twinkle in his bright eyes, and a peculiar twist of his fine lips (I can see him now), replied: "Why, really, the operations of your Honor's mind are so wonderfully rapid that unless counsel argue *after* your opinion is expressed, they would have no opportunity to argue at all."

The Judge laughed, pretermitted the rule, heard the General, and magnanimously reversed his decision, with a caveat that the privilege accorded to the senior member was not to be taken as a precedent for the juniors of the bar.

At the County Tavern at Orange Courthouse in that period the judge (Field) and bar often assembled in the evening after the labors of the day were over, when professional, public, historic and literary matters were discussed with clever and playful criticism, in which sharp blows were given and received without temper or offence. Three lawyers were there who took part in the debate (the judge and the remainder of the bar being auditors)—General Gordon, William Green and Alexander R. Holladay.

General Gordon admired and was better read in Shakespeare than in the works or reports my Lord Coke. On this occasion he was dilating (not diluting, as a wag once said of another speaker) on the marvellous genius of the great poet. He rose (he generally did rise when his conversation became something of a speech), and held the floor without dispute, and *not* under the hour rule. He permitted questions from the audience, which only sharpened his wit and gave spirit to his eloquence.

GREEN AND GORDON.

Green and Gordon were great friends and mutual admirers. Each admired in the other what he did not himself specially possess. Gordon dreaded Green's nice points of law; Green feared Gordon's eloquence before the jury. Hence their tactics, when opposed, were diverse. Gordon strove to brush away Green's obstructive legal objections in order to get to the jury, while Green sturdily interposed them to keep Gordon from the jury. "For Heaven's sake," cried Gordon one day, "let us get to the jury." "No," said Green, "for if we do my case is lost."

On the occasion in question Gordon spoke of the myriad-minded Shakespeare, whose knowledge of the human heart was as if he had made it; declared that he seemed to know every human avocation, as

if he were a master workman in it, and that, in a word, *nil tetigit quod non ornavit*.

At this point Green, who was quietly walking up and down the room, listening with genuine interest to the eulogy on Shakespeare, interposed with the remark: "Well, General, I am not disposed to depreciate your beautiful tribute to the immortal bard, but it is due to my loyalty to our profession to affirm with confidence what I am ready to maintain before the court, that whatever he may have known of other avocations, he was not even a tyro in the science of jurisprudence."

Gordon (with emphatic contemptuousness): "Well, I suppose he could hardly compete with a county court lawyer in the trial of a petty case before the Court of Orange. But I challenge you to the proof."

Green: "In answer to your challenge, I allege he showed utter ignorance of the simplest maxims of law in the decision of the case, '*in re Shylock*.'"

Gordon: "Who the —— ever heard it called '*in re Shylock*?'"

Green: "I know no other way to cite it; but I affirm the decision was utterly absurd."

Gordon: "No doubt it is unintelligible to the pettifoggers who practice in the county courts, but do you propose to drag down the 'Winged Pegasus' of Shakespeare's genius and drive him to the tumble cart of your petty county court?"

Green (not offended at this playful badinage): "Well, General, notwithstanding your objurgatory expressions, I proceed to show the judgment was wrong." Green (now adopting the semi-Socratic method, which Gordon did not relish) proceeded: "You admit that when A grants anything to B the law implies the grant with it of all that is necessary to the enjoyment of the thing granted. You concede that?"

Gordon: "No, I'll be hanged if I do; but, for sake of argument, I admit it."

Green: "Therefore, when Antonio granted to Shylock a pound of flesh to be taken from about his heart, the law implied that so much blood was granted with the flesh as must be shed in order to the legal possession and enjoyment of the pound of flesh granted. But Mrs. Justice Portia held that he could not take the flesh because blood would be shed in doing so, which blood had not been granted, contrary to the simplest maxims of the horn books of the law. Hence, I say, Shakespeare knew nothing of law."

The General was not prepared to meet this nice objection, and

emptied the vials of his playful wrath upon his learned friend for questioning Mrs. Justice Portia's judgment.

ANOTHER SIDE.

At this point Mr. Holladay intervened.

"But, Mr. Green, may not the decision be vindicated by the authority of the old case of *Collins v. Blantern*. This was not a case of grant. It was an executory, not an executed, contract. An executory contract to take flesh and blood from the heart of a man involved his life; it was a contract against law and for crime. It was void and could not be enforced."

Gordon (exultant): "Now, Mr. Critic, what do you say to that?"

Green (with all the gravity of a barrister in the appellate court): "The point made by Mr. Holladay is very ingenious. I will look to see if the authorities sustain it. But, General, if well taken, it leaves *my* contention untouched; for as Mrs. Justice Portia based her decision on the ground which I have objected to, and did not assign as a reason for it that offered by Mr. Holladay, I insist that, while Shakespeare may have decided rightly, yet, as he did so for a wrong reason, he showed he was no lawyer."

The discussion closed with merry laughter, and the parties retired to bed with mutual feelings of admiration and affection.

Long after the dramatic scene at the Virginia courthouse had been enacted, and after the actors had passed away forever, an able German writer, Dr. Rudolph von Ihering wrote a book entitled, "The Struggle for Law," and makes one of his leading cases that of "*in re Shylock*." In a note on page 81 he thus comments on the judgment in that case:

"The eminently tragic interest which we feel in Shylock I find in the fact that justice is not done him, for this is the conclusion to which the lawyer must come. The poet is, of course, free to build up his own system of jurisprudence. . . . But, when the jurist submits the question to a critical examination, he can only say that the bond was in itself null and void, because its provisions were contrary to good morals. The judge should, therefore, have refused to enforce its terms on this ground from the first. But as he did not do so, as the 'Wise Daniel' admitted its validity, it was a wretched subterfuge, a miserable piece of pettifoggery, to deny the man whose right he had already admitted to cut a pound of flesh from the living body, the right to the shedding of the blood which necessarily accompanied it. Just as well might the judge deny to the person whose right to an

easement he acknowledged the right to leave foot-marks on the land, because this was not expressly stipulated for in the grant."

In his preface to his fifth edition the German jurist refers to the fact that his views, as to the case of "*in re Shylock*," had been contested, and vindicates them as follows:

"I have not contended that the judge should have recognized Shylock's bond to be valid, but that, once he had recognized its validity, he should not subsequently have invalidated it by base cunning. The judge had the choice of deciding the bond valid or invalid. He should have declared it to be the latter, but he declared it to be the former. . . . Antonio's friends, Antonio himself, the court, all were agreed that the bond gave the Jew a legal right. . . .

"And the 'Wise Daniel' recognized it. And now, after the judge's decision has been given, after all doubt as to the legal right of the Jew has been removed by the judge himself; . . . after the whole assembly, the Doge included, have accommodated themselves to the inevitable decree of the law, now that the victor, entirely sure of his case, intends to do what the judgment of the court authorized him to do, the same judge, who had solemnly recognized his rights, renders those rights nugatory by an objection, a stratagem so contemptible that it is worthy of no serious attention. Is there any flesh without blood? The judge who accorded Shylock the right to cut a pound of flesh out of Antonio's body accorded him, at the same time, the right to Antonio's blood, without which flesh cannot be. Both are refused to the Jew. He must take the flesh without the blood, and cut out only an exact pound of flesh, no more and no less. Do I say too much when I assert that here the Jew is cheated out of his legal right? True, it is done in the name of humanity, but does chicanery cease to be chicanery because practiced in the name of humanity?"

My brothers of the bar, is not the critical reasoning of the learned German jurist, as the result, doubtless, of profound study of the case, anything but a report of the off-hand debate at Orange Courthouse, in the social gathering of country lawyers, between Gordon, Green and Holladay?

But where does the criticism leave my admirable friend, General Gordon, in his claim of eminent judicial ability for the great dramatist? He shall have his claim vindicated.

THE MERCHANT OF VENICE.

The case of *Langford v. Barnard* was decided in the year 1595-'96 (37th Eliz.) Tothill 134. The Merchant of Venice was published in the years 1598 and 1600. This case brought into collision the claim to the penalty which the *law* allowed the obligee on a penal bond, or the right of foreclosure of a mortgage on land, (or "the pound of flesh," it might be,) with the decree which *equity* made, that the penalty should be forbidden, when the thing was offered to be done which the penalty was designed to secure. Will Shakespeare, no more a technical lawyer than my noble old friend, in the offer which Equity, in the person of Portia, made to Shylock to take his debt and release the penalty, took sides with the chancery against the law. He meant to depict the cruel injustice of the law and the perfect justice which chancery afforded by the equity of redemption, and furnished an argument, which has, in the judicature of the English-speaking people, established for three centuries a remedy the Doge of Venice never knew, but which the fair Portia, voicing the broad views of the great dramatic poet, suggested as the true solution of "*in re Shylock*." In the court of *law* the judgment was wrong on the grounds on which it was made to rest, as Mr. Green insisted; but even in that court was right on the point made by Mr. Holladay, and which Portia did not rely upon. But Shakespeare's Portia showed what jurisprudence ought to be, in staying the hand of the cruel exactor of a mortal penalty, and compelling him to take his debt and be satisfied, thus saving the debtor from the penalty, but requiring him to do justice to the creditor.

Did not Shakespeare, the boon companion of the famous lawyers of the Kingdom, write his great drama to show what jurisprudence should be in such a case—to satirize the harsh doctrines of the Common Law, and to vindicate the then recent, and now established, doctrine of *Langford v. Barnard*?

My task is done, my theme
Has died into an echo: it is fit
The spell should break of this protracted dream.

Ancient of days, August Virginia! where,
Where are thy men of might, thy grand in soul?
First in the race, that led to Glory's goal,
They won and passed away. Is this the whole?
A school boy's tale, the wonder of an hour?

Let the faint picture of an old man's dream of the memorable past make us resolve that it shall not be the WHOLE. Let the young bar cherish these memories of the former glory, and make the new temple of our jurisprudence more splendid than the old!

For myself, my race is nearly run. But when my head shall rest upon the bosom of this great Commonwealth, near to the spot where I drew my first breath, my last aspiration shall be, and I invoke you to join in it, that amid all the evils which environ us, and the dangers that menace us, our Venerable Mother Virginia shall be protected by God's good providence and guided into paths of peace, prosperity and glory!

God save the Commonwealth !